

SENATE BILL NO. 309

INTRODUCED BY M. HALLIGAN, B. THOMAS, FRANKLIN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A RECOVERY CARE BED IN AN OUTPATIENT CENTER FOR SURGICAL SERVICES FROM BEING USED FOR A PATIENT FOR ~~LONGER THAN 23 HOURS~~ 24-36 24 HOURS OR MORE; PROVIDING FOR A WAIVER BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING DEFINITIONS; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through ~~4~~ 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such

1 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
2 administration. The term does not include the administration of prescriptive medications.

3 (4) "Affected person" means an applicant for a certificate of need, a health care facility located
4 in the geographic area affected by the application, an agency that establishes rates for health care
5 facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

6 (5) "Capital expenditure" means:

7 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted
8 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

9 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or
10 any other property of value had changed hands.

11 (6) "Certificate of need" means a written authorization by the department for a person to proceed
12 with a proposal subject to 50-5-301.

13 (7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
14 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health
15 problems and endangers the health, interpersonal relationships, or economic function of an individual or
16 the public health, welfare, or safety.

17 (8) "Clinical laboratory" means a facility for the microbiological, serological, chemical,
18 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of
19 materials derived from the human body for the purpose of providing information for the diagnosis,
20 prevention, or treatment of a disease or assessment of a medical condition.

21 (9) "College of American pathologists" means the organization nationally recognized by that name
22 that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet
23 its standards and requirements.

24 (10) "Commission on accreditation of rehabilitation facilities" means the organization nationally
25 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation
26 status to a rehabilitation facility that it finds meets its standards and requirements.

27 (11) "Comparative review" means a joint review of two or more certificate of need applications
28 that are determined by the department to be competitive in that the granting of a certificate of need to one
29 of the applicants would substantially prejudice the department's review of the other applications.

30 (12) "Construction" means the physical erection of a health care facility and any stage of the

1 physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health
2 care facility.

3 (13) "Department" means the department of public health and human services provided for in
4 2-15-2201.

5 (14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
6 diseases and includes freestanding hemodialysis units.

7 (15) "Federal acts" means federal statutes for the construction of health care facilities.

8 (16) "Governmental unit" means the state, a state agency, a county, municipality, or political
9 subdivision of the state, or an agency of a political subdivision.

10 (17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
11 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated,
12 or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to
13 any individual. The term does not include offices of private physicians, dentists, or other physical or mental
14 health care workers regulated under Title 37, including chemical dependency counselors. The term includes
15 chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home
16 health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities,
17 medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers
18 for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

19 (18) "Health maintenance organization" means a public or private organization that provides or
20 arranges for health care services to enrollees on a prepaid or other financial basis, either directly through
21 provider employees or through contractual or other arrangements with a provider or group of providers.

22 (19) "Home health agency" means a public agency or private organization or subdivision of the
23 agency or organization that is engaged in providing home health services to individuals in the places where
24 they live. Home health services must include the services of a licensed registered nurse and at least one
25 other therapeutic service and may include additional support services.

26 (20) "Home infusion therapy agency" means a health care facility that provides home infusion
27 therapy services.

28 (21) "Home infusion therapy services" means the preparation, administration, or furnishing of
29 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's
30 residence. The services include an educational component for the patient, the patient's caregiver, or the

1 patient's family member.

2 (22) "Hospice" means a coordinated program of home and inpatient health care that provides or
3 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's
4 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during
5 the final stages of illness and dying and that includes formal bereavement programs as an essential
6 component. The term includes:

7 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice
8 that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

9 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program
10 that can house three or more hospice patients.

11 (23) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
12 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
13 Services provided may or may not include obstetrical care, emergency care, or any other service allowed
14 by state licensing authority. A hospital has an organized medical staff that is on call and available within
15 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered
16 nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally
17 retarded, and tubercular patients.

18 (24) "Infirmary" means a facility located in a university, college, government institution, or industry
19 for the treatment of the sick or injured, with the following subdefinitions:

20 (a) an "infirmary--A" provides outpatient and inpatient care;

21 (b) an "infirmary--B" provides outpatient care only.

22 (25) "Intermediate developmental disability care" means the provision of nursing care services,
23 health-related services, and social services for persons with developmental disabilities, as defined in
24 53-20-102, or for individuals with related problems.

25 (26) "Intermediate nursing care" means the provision of nursing care services, health-related
26 services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour
27 nursing care.

28 (27) "Joint commission on accreditation of healthcare organizations" means the organization
29 nationally recognized by that name that surveys health care facilities upon their requests and grants
30 accreditation status to a health care facility that it finds meets its standards and requirements.

(28) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(29) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.~~

~~(33)~~(32) "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~(33) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an

1 outpatient center for surgical services.

2 ~~(35)~~(34) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or
3 organization that is specifically designed and operated to provide surgical services to patients not requiring
4 hospitalization and that may include ~~observation~~ recovery care beds.

5 ~~(36)~~(35) "Patient" means an individual obtaining services, including skilled nursing care, from a
6 health care facility.

7 ~~(37)~~(36) "Person" means an individual, firm, partnership, association, organization, agency,
8 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

9 ~~(38)~~(37) "Personal care" means the provision of services and care for residents who need some
10 assistance in performing the activities of daily living.

11 ~~(39)~~(38) "Personal-care facility" means a facility in which personal care is provided for residents
12 in either a category A facility or a category B facility as provided in 50-5-227.

13 ~~(39) "Recovery care bed" means, EXCEPT AS PROVIDED IN [SECTION 2], a bed occupied for no longer~~
14 ~~than 23~~ LESS THAN ~~24-36~~ 24 hours by a patient recovering from surgery or other treatment.

15 (40) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting
16 in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,
17 psychological and social services, or vocational evaluation and training or any combination of these
18 services and in which the major portion of the services is furnished within the facility.

19 (41) "Resident" means an individual who is in a long-term care facility or in a residential care
20 facility.

21 (42) "Residential care facility" means an adult day-care center, an adult foster care home, a
22 personal-care facility, or a retirement home.

23 (43) "Residential psychiatric care" means active psychiatric treatment provided in a residential
24 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional,
25 psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to
26 adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized
27 and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible
28 time.

29 (44) "Residential treatment facility" means a facility operated for the primary purpose of providing
30 residential psychiatric care to individuals under 21 years of age.

(45) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(46) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(47) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department."

NEW SECTION. SECTION 2. HOURLY LIMITATION WAIVABLE BY DEPARTMENT OR DEPARTMENT'S DESIGNEE.

THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE MAY WAIVE THE 24-HOUR LIMITATION RELATED TO RECOVERY CARE BEDS, AS DEFINED IN 50-5-101, AS THAT LIMITATION APPLIES TO A PARTICULAR BED, IF THE ATTENDING PHYSICIAN OF THE INDIVIDUAL OCCUPYING THE BED DETERMINES THAT THE WAIVER IS MEDICALLY APPROPRIATE. THE WAIVER MAY BE GRANTED BY THE DEPARTMENT BEFORE OR AFTER THE 24-HOUR LIMITATION IS EXCEEDED.

NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 5, PART 2, AND THE PROVISIONS OF TITLE 50, CHAPTER 5, PART 2, APPLY TO [SECTION 2].

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 5. Applicability. [This act] applies to a health care facility license for an outpatient center for surgical services that is issued or renewed after [the effective date of this act].

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